

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL-5268-9]

Administrative Reporting Exemptions for Certain Radionuclide Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking requests comments on broader administrative exemptions from the release reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act. In particular, the Environmental Protection Agency (EPA) is proposing to grant reporting exemptions for releases of naturally occurring radionuclides associated with land disturbance incidental to extraction activities at certain kinds of mines, and coal and coal ash piles at all kinds of sites. EPA also is requesting comments on two alternatives to these exemptions.

These reporting exemptions are being proposed in response to comments on a November 30, 1992 proposed rule on administrative reporting exemptions (57 FR 56726).

EPA thoroughly evaluated the radionuclide concentrations in various mining materials, coal, and coal ash relative to background levels to determine the scope of the proposed reporting exemptions; thus, this document reflects a sound, scientific approach. The exemptions would be consistent with the Agency's common sense goals in that they would eliminate unnecessary reporting burdens and allow EPA to focus its resources on the most serious releases. The reporting exemptions would result in an estimated net cost savings to industry of approximately \$455,000 annually.

DATES: Comments must be submitted on or before October 3, 1995.

ADDRESSES: *Submittal of Comments:* Comments should be submitted in triplicate (no facsimiles or tapes) to: Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603-8917. Please note that this is the mailing address only. Documents are available for viewing, by appointment only, at the address provided below in the "Document Viewing" section.

Document Viewing: Copies of materials relevant to this rulemaking are contained in Docket Number 102RQ-RN-2 at EPA Headquarters at the following address: U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The docket is available for viewing, by appointment only, after the appearance of this rule. An appointment to view the docket can be made by calling the Docket Coordinator at 703/603-8917. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please note that this is the visiting address only. Mail comments to the address listed above in the "Submittal of Comments" section.

The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of \$25 and a charge of \$0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

Release Notification: The toll-free telephone number of the National Response Center is 800/424-8802; in the Washington, DC metropolitan area, the number is 202/267-2675. The facsimile number for the National Response Center is 202/267-2165 and the telex number is 892427.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424-9346 (in the Washington, DC metropolitan area, contact 703/412-9810); the Telecommunications Device for the Deaf (TDD) Hotline at 800/553-7672 (in the Washington, DC metropolitan area, contact 703/486-3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or at 703/603-8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 et seq., as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substance" primarily by reference to various Federal environmental statutes.

Under section 103(a) of CERCLA, the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its reportable quantity (RQ) must immediately notify the National Response Center (see 40 CFR 302.6). In addition, the person in charge of a facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its RQ must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99-499), 42 U.S.C. 11001 et seq. (see 40 CFR 355.40). As established by EPA in an earlier RQ rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether an RQ or more of a hazardous substance has been released (i.e., only releases of an RQ or more within 24 hours need to be reported) (see 40 CFR 302.6(a)).

Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust the RQs for all hazardous substances by regulation.

A major purpose of the section 103(a) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that an RQ is merely a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion. Federal personnel evaluate all reported releases, but in some cases will not initiate a response because the release of an RQ does not pose a hazard in all circumstances. Government personnel assess each reported release on a case-

by-case basis to determine the appropriate response action, if any.

CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) together provide EPA with authority to grant administrative reporting exemptions. Such exemptions may be granted for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases serves little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release. Through such reporting exemptions, therefore, the Federal response system is able to more efficiently implement CERCLA and EPCRA and more effectively focus on reports of releases that are more likely to pose a significant hazard to human health and the environment.

B. Background of This Rulemaking

Radionuclides are CERCLA hazardous substances because they are listed as hazardous air pollutants under section 112 of the Clean Air Act. Radionuclides initially had a one-pound RQ as established by CERCLA section 102(b). EPA recognized that an RQ of one pound for radionuclides was not appropriate because radionuclides are not generally measured in units of pounds, and releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. On March 16, 1987, EPA published a Notice of Proposed Rulemaking (NPRM) to adjust the RQ for radionuclide releases (52 FR 8172), with the comment period ending on May 15, 1987. A total of 28 comment letters, totaling about 150 pages, were received. The comments received, together with the Agency's responses, are contained in "Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides" (Responses to Comments), which is available for inspection in Docket Number 102RQ-RN located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

The Agency promulgated a final rule (54 FR 22524; May 24, 1989) to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA considered carefully all of the public comments submitted on the proposals made in the March 16, 1987 NPRM. The final rule granted four administrative exemptions from

CERCLA section 103 and EPCRA section 304 reporting requirements based on those comments. In particular, the Agency exempted: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

Following the final rulemaking, the American Mining Congress (AMC), The Fertilizer Institute (TFI), and others challenged the rule in the United States Court of Appeals for the District of Columbia in *TFI v. EPA* (935 F2d 1303). In the litigation, AMC and TFI argued that EPA violated the Administrative Procedure Act (APA) by failing to provide notice and opportunity to comment on the proposed exemptions. The petitioners also argued that it was arbitrary and capricious for EPA to discriminate against mining by excluding it from the land disturbance exemption.

The Court found that the administrative reporting exemptions were improperly promulgated because EPA failed to provide adequate notice of, and opportunity for public comment on, those exemptions. The Court, however, left the four exemptions in place while the Agency undertakes a new round of notice and comment rulemaking.

In a proposed rule published on November 30, 1992 (57 FR 56726), the Agency complied with the Court's decision by providing notice of, and requesting comment on, the same four exemptions from CERCLA section 103 and EPCRA section 304 notification requirements that were promulgated in the 1989 final radionuclide RQ adjustment regulation. EPA requested that public comments on the November 30, 1992 proposal be submitted by January 29, 1993. In response to several requests for an extension to the comment period, and in the interest of allowing the public greater opportunity to evaluate the issues raised in the November 30, 1992 NPRM, EPA re-opened the public comment period for an additional 60 days beginning on March 5, 1993 (58 FR 12876). All background materials and public comments related to the November 30, 1992 proposal are available for

inspection in Docket Number 102RQ-RN-1 located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

A total of 27 comment letters, totalling more than 750 pages, were received on the November 30, 1992 NPRM, including two after the initial deadline and one after the close of the second comment period. These comments raised a number of issues that the Agency cannot resolve without additional information and analysis. Chief among these issues are:

- Do radionuclide releases from land disturbance incidental to extraction activities at mines pose a greater risk than such releases from farming and construction?
- Do coal and coal ash piles at sites without coal-fired boilers (e.g., coal piles at mines, railroad stockyards, and steel mills, and coal ash disposed of in off-site landfills) pose a greater radiological threat than such piles at boiler sites?
- Is the government likely to respond to radionuclide releases from land disturbance incidental to extraction activities or coal and coal ash piles at non-boiler sites, and if so, what response realistically can be taken?

After reviewing the public comment letters and evaluating these issues, the Agency has decided to issue this supplemental proposal requesting information and comment on expanded reporting exemptions for certain radionuclide releases.

C. Consultation and Outreach Activities

EPA has undertaken a number of activities to involve interested stakeholders in considering and developing this supplemental proposal. The November 30, 1992 NPRM served as a basis for informing and soliciting comments from all parties on the original reporting exemptions for four categories of radionuclide releases. Comment letters from mining trade organizations, individual mining companies, electric power generators and trade organizations, railroads, steel manufacturers, private citizens, States, and others were received and served as the prime impetus for considering broader exemptions. At their request, EPA met with representatives of AMC and TFI on January 22, 1993 to hear their issues and concerns regarding the November 30, 1992 NPRM. Following this meeting and the receipt of requests submitted by commenters, EPA re-opened the public comment period for an additional 60 days to give

stakeholders ample opportunity to fully address their concerns. EPA then met again with representatives of AMC and TFI, at their request, on February 25, 1994 to receive further information and hear their views on the matter.

This supplemental proposal was developed based on careful consideration of all information and comments received since the reporting exemptions for certain radionuclide releases were originally promulgated. EPA will develop a final rule on this matter based on combined information and comments received on both the November 30, 1992, NPRM and this supplemental proposal.

II. Regulatory Reporting Exemptions

A. Proposed Exemptions

EPA is proposing to broaden the present reporting exemption for land disturbance activities to include land disturbance incidental to extraction activities at all mines except certain categories of mines that are likely to handle raw materials with "elevated" radionuclide concentrations. The particular types of mines that would *not* be within the scope of the reporting exemption would be uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines. For the purpose of this preamble and proposed rule, mines that extract monazite (a particular kind of rare earth mineral) for its thorium content are considered rare earth mines. Releases of naturally occurring radionuclides from land disturbance at all other types of mines would be exempted from CERCLA section 103 and EPCRA section 304 reporting requirements. For the purpose of this proposal, land disturbance incidental to extraction activities would include land clearing, overburden removal and stockpiling, and excavating, handling, transporting, and storing ores and other raw materials. Beneficiation and mineral processing activities, including the associated handling, transporting, and storing of bulk materials, would not be included within the scope of the exemption because such operations may tend to (1) concentrate radionuclides in waste streams or other materials well above natural background levels, and/or (2) result in substantially greater releases than associated with land disturbance incidental to extraction (e.g., smokestack emissions from smelters may far exceed fugitive releases from mining). Additionally, this broader exemption would exempt radionuclide releases from the subject land disturbance activities only from CERCLA section 103 and EPCRA section

304 reporting requirements, not from CERCLA response or liability provisions.

EPA also is proposing to broaden the existing exemptions for coal and coal ash piles to include radionuclide releases to and from coal and coal ash piles at all kinds of sites, not just sites where there is a coal-fired boiler. As with the broader land disturbance exemption, this exemption for coal and coal ash piles would apply only to CERCLA section 103 and EPCRA section 304 reporting requirements, not to the related response or liability provisions. In the 1989 final radionuclide RQ adjustment rulemaking, the reporting exemptions for radionuclide releases to and from coal and coal ash piles at boiler sites were granted based both upon the risks posed and the appropriateness of a federal response to such releases under CERCLA (54 FR 22529, May 24, 1989). The exemptions were limited to only boiler sites because there was sufficient information available to quantify the radiological risks of coal and coal ash piles at boiler sites, but not other kinds of sites. As discussed in more detail below, EPA is proposing today that a quantitative risk assessment is not necessary to support a CERCLA and EPCRA reporting exemption, if threshold questions about the appropriateness and feasibility of a federal response can be answered by a simple determination that radionuclide releases are at or near natural background levels. While this approach would be a departure from the detailed risk analysis performed for coal and coal ash piles at boiler sites, it would in fact be consistent with the original exemptions granted for undisturbed land holdings and land disturbance activities such as farming and construction, which were based on a qualitative review of radionuclide releases relative to background rather than a quantitative risk assessment.

EPA is proposing these broader exemptions for three primary reasons, which apply equally to both land disturbance at certain mines and to coal and coal ash piles at non-boiler sites. First, the concentrations of naturally occurring radionuclides in the different materials that would be subject to the exemption (e.g., overburden and ores in the subject mining sectors, coal, and coal ash) are generally within the range of "typical" background concentrations in surficial rocks and soils in the U.S. Second, EPA believes that a CERCLA response, to the release otherwise reportable, would be very unlikely and possibly infeasible or inappropriate, because (1) the concentrations of materials being handled are at or near

background, and (2) the resulting radionuclide releases are expected to be continuously low, spread over large areas, and widely dispersed in the environment. Third, the submission of individual notifications of these releases does not appear necessary for the government to assess whether a response action is needed, since the releases should be similarly low across all sites subject to the broader exemptions. As a result, the broader reporting exemptions are intended to allow EPA to focus its resources on the most serious releases and to protect public health and welfare and the environment more effectively and efficiently. At the same time, the exemptions would eliminate unnecessary reporting burdens on persons responsible for land disturbance at certain mine sites and any sites where coal or coal ash is stored or disposed.

With respect to radionuclide concentrations, EPA reviewed available data on the concentrations of naturally occurring radionuclides in surficial rocks and soils, as well as in various ores, coal, and coal ash. These data are presented in a Technical Background Document ("Technical Background Document Supporting Proposed Administrative Reporting Exemptions for Certain Releases of Radionuclides") available for inspection in the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. As discussed in more detail in this document, typical concentrations of uranium-238, thorium-232, and their respective decay products in surficial rocks and soils in the U.S. hover around 1 picocurie per gram (pCi/g), although data developed by Myrick et al.¹ and other researchers show that uranium-238 concentrations may range from 0.12 to 3.8 pCi/g and thorium-232 concentrations may range from 0.10 to 3.4 pCi/g. Concentrations well above these typical values, however, are known to occur in certain hot spot areas of the country. For example, elevated radioactivity has been observed in association with certain faults and shear zones in the Reading Prong region of Pennsylvania, New York, and New Jersey, with uranium-238 concentrations as high as 27 pCi/g being reported in one "profound case."² Similarly, uranium-238 concentrations

¹ Myrick, T.E., B.A. Berven, and F.F. Haywood, "Determination of Concentrations of Selected Radionuclides in Surface Soil in the U.S.," *Health Physics*, Vol. 45, No. 3 (September), pp. 631-642, 1983.

² Smith et al., "Radon: A Profound Case," *Pennsylvania Geology*, Volume 18, No. 2, p. 1-7, 1987.

of 20 pCi/g or more have been observed in isolated spots in central Florida where phosphate deposits are exposed or near the land surface.

Available data indicate that the radionuclide concentrations in many mining materials, coal, and coal ash are generally within the range reported for typical background. For example, as shown in the Technical Background Document supporting this proposed rule, all available data on the uranium-238 and thorium-232 concentrations in iron ore, zinc ore, limestone, clay, and fluor spar are within the range reported by Myrick et al. for background surface soils. Ninety-eight percent of all coal samples analyzed in support of EPA's 1989 final airborne emission standards for radionuclides were also within the typical background range; concentrations significantly above this range (between 20 and 43 pCi/g of uranium-238) were observed in only two out of more than 3,700 coal samples analyzed. The radioactivity of coal ash is usually higher than that of coal (estimated to be about ten times higher). However, typical coal ashes are expected to contain 4.3 pCi/g of uranium-238 and 3.5 pCi/g of thorium-232, which are only slightly higher than the background range reported by Myrick et al. Bauxite (aluminum) ore also can contain radionuclide concentrations that are slightly elevated compared to normal background (around 6 pCi/g of thorium-232 and 7 pCi/g of uranium-238), but still relatively low compared to the levels that naturally exist in surface rocks and soils in some areas of the country.

Most data indicate that radionuclide concentrations in copper ores are at or near typical background levels. For example, a 1982 EPA study³ reports that the uranium-238 concentration in copper ore ranges from 0.79 pCi/g at an underground mine to 2.2 pCi/g at a surface mine. The concentration of thorium-232 is reported to range from 0.62 pCi/g at an underground mine to 3.1 pCi/g at a surface mine. These levels fall within the background ranges for surficial soils as reported by Myrick et al. Elevated levels, however, have been observed in certain copper ores from Arizona, Utah, and New Mexico (see the Technical Background Document for more information). Based on current information and understanding, EPA believes that many of these elevated readings are probably reflective of a biased sampling program, and that large

site averages are likely to be lower and approaching typical background levels. EPA requests more reliable and current data on the radionuclide concentrations in copper ores along with comments on how these ores should be treated for the purpose of the final reporting exemption rule. If found to be necessary based on data and other information submitted during the comment period, land disturbance incidental to copper mining could be grouped with those mining sectors that would not be granted a reporting exemption in the final rule.

The relatively low radionuclide concentrations reported for these different materials do not necessarily mean that the risks associated with radionuclide releases from many types of extraction sites and coal and coal ash piles are low or representative of undisturbed background. Indeed, many factors associated with the nature of the materials, management practices, and environmental and population characteristics at these sites would need to be studied in substantially more detail before it could be demonstrated that such risks are low in all or most cases. However, based on the relatively low radionuclide concentrations and the generally low-level, diffuse releases associated with the activities involved (land disturbance incidental to mining extraction; transporting, dumping, and storing coal; and transporting, dumping, storing, and disposing of coal ash), EPA believes that a CERCLA removal or remedial response to such radionuclide releases would very rarely, if ever, be necessary. Moreover, it is not clear that it would be feasible or practical to mount a CERCLA response at these types of sites, since the materials in question already have radionuclide concentrations that are likely to be at or near background and CERCLA responses would not normally clean up to below background levels. Any effort to remove the subject extraction materials, coal, or coal ash or cover these materials with soil, for example, would leave exposed soils that would have comparable concentrations of naturally occurring radionuclides. Therefore, EPA believes that reporting exemptions are warranted because continued evaluation and reporting of such radionuclide releases serves no useful purpose and, in fact, places an unnecessary burden on society. CERCLA response and liability provisions, however, would remain intact, enabling a response if a serious radiation threat is ever discovered by other means (e.g., Regional and State inspections) at an exempted mine or coal or coal ash pile.

This same logic does not necessarily hold for other types of extraction sites that handle ores and other raw materials that routinely have radionuclide concentrations well above background levels. As discussed in more detail in the Technical Background Document supporting this proposed rule ("Technical Background Document Supporting Proposed Administrative Reporting Exemptions for Certain Releases of Radionuclides," available for inspection in the Superfund Docket), the materials extracted at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines can have elevated concentrations of uranium-238 and/or thorium-232, along with their respective decay products. For example:

- Uranium ore has a uranium-238 concentration on the order of 280–560 pCi/g, although concentrations as high as 760 pCi/g are reported in the literature.
- Uranium-238 concentrations in phosphate rock range from 3–4 pCi/g in Tennessee to 20–60 pCi/g in other States (Florida, North Carolina, Idaho, Montana, Wyoming, and Utah). Concentrations as high as 270 pCi/g of uranium-238 have been reported.
- No data are available on the radionuclide concentrations in domestically mined tin ores. However, available data show that tin slag (produced from tin ore processing) contains 17–34 pCi/g of uranium-238. In addition, concentrated processed ores from Malaysia have been shown to contain 1,160 to 8,830 pCi/g of thorium-238.
- Some titanium ores (rutile and leucocoxene) are reported to contain 12–14 pCi/g of uranium-238 and 1–10 pCi/g of thorium-232.
- Zircon (zirconium and hafnium ore) has been measured to contain 13 pCi/g of radium-226, a decay product of uranium-238 (which would be expected to be present at about the same concentration as radium-226). Measurements of radium-226 concentrations in processed ore concentrates from South Africa are as high as 200 pCi/g.
- Vanadium-bearing ores are commonly the same as uranium ores, because vanadium is often recovered as a coproduct from uranium ore. Ores recovered primarily for their vanadium content contain lower radionuclide concentrations than uranium ore, but still appear to contain uranium at levels higher than typical background (in the 30 to 58 pCi/g range).
- Monazite, an ore mined for its rare earth and thorium content, typically

³ U.S. EPA, "Emissions of Naturally Occurring Radioactivity from Aluminum and Copper Facilities," Office of Radiation Programs, Las Vegas Facility, NV, EPA-520/6-82-018, 1982.

contains 3,900 pCi/g of thorium and 1,800 pCi/g of uranium. Another rare earth ore, bastnasite, typically contains less than 97 pCi/g of thorium.

These concentrations generally are far above typical background concentrations expected in surface soils across most of the U.S. (i.e., uranium-238 ranging from 0.12 to 3.8 pCi/g, with an average of 1 pCi/g, and thorium-232 ranging from 0.10 to 3.4 pCi/g, with an average of 1 pCi/g). The concentrations in uranium ore, phosphate rock, and rare earth ores (including monazite mined for its thorium content) also are above the elevated background concentrations known to exist at or near the land surface in certain hot spot regions of the country, such as the Reading Prong region.

Just as the relatively low concentrations in iron, zinc, limestone, copper, and other mining sectors proposed to be exempted do not necessarily mean that the radiation risks are low, the relatively high concentrations encountered during uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining do not necessarily mean that the radiation risks at these sites are high. To the contrary, EPA's risk analysis⁴ supporting the National Emission Standards for Hazardous Air Pollutants (NESHAPs) shows that airborne emissions of radionuclides from surface uranium mines result in a maximally exposed individual risk of fatal cancer of 5×10^{-5} . Furthermore, U.S. Nuclear Regulatory Commission licenses control radionuclide releases to all media from in-situ uranium mines and an EPA NESHAP limits radon emissions to the air from underground uranium mines (40 CFR part 61, subpart B); as a consequence, releases in compliance with these limits may be federally permitted under CERCLA and thus excluded from CERCLA reporting and liability requirements.

EPA believes, however, that the elevated radionuclide concentrations in raw materials handled at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines distinguish such materials from the soil and rock disturbed at the vast majority of farming and construction sites across the U.S. When these elevated radionuclide concentrations are coupled with other factors that tend to distinguish mining from farming and

construction—generally much larger sites, larger quantities of earthen materials moved and stockpiled, longer-term and more frequent land disturbances at a given site, and frequently substantially greater depths uncovered (see the Technical Background Document for more detail)—EPA believes there is a reasonable basis for not including uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining in the reporting exemption for land disturbance activities. Again, this does not mean that the radiation risks at such mines are necessarily high, but only that, in EPA's judgment, further evaluation would be required before it can be concluded with a sufficient degree of confidence that such risks are indeed low and that a government response would be unwarranted or infeasible.

Commenters wishing to support exemptions for uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining and wishing to obtain a reporting exemption are requested to submit particular kinds of information along with their comments on this proposal. Data and analyses regarding the radionuclide concentrations in ores and other raw materials handled in these mining sectors relative to the undisturbed, naturally occurring levels at or near the land surface around the mine sites would be especially helpful. If such data and analyses can demonstrate that the radionuclide concentrations in the ores and raw materials being handled are generally within the normal background range for surficial rocks and soils in the same area, a basis for broadening the reporting exemptions further to include these mining sectors may exist. If such a demonstration cannot be made, EPA requests information on special circumstances that would make a CERCLA response to radionuclide releases at these mine sites very unlikely, infeasible, and/or inappropriate.

These special circumstances could include a demonstration that the radiation exposures and risks, for all radionuclides and all possible exposure pathways (not just radon and not just the air pathway), are low (e.g., 10^{-4} or lower lifetime cancer risk) for reasonably maximally exposed individuals, including closest offsite residents and onsite workers. Any analysis of risks should focus either on all sites within a given mining sector or on a model site that is demonstrated to conservatively represent other sites. Anecdotal information or basic assertions regarding independent factors

that might influence risk, such as generalized statements that mines are commonly located in remote areas or that radon released from mines disperses rapidly and causes no incremental exposure above natural background radiation, are not convincing unless supported by data and an integrated risk analysis. Moreover, EPA believes that broad comparisons of the cumulative amount of soil moved or the cumulative amount of radon released at all mines versus all farming and construction sites are immaterial, since the need for a CERCLA response hinges on the particular conditions at any individual site, not all like sites in aggregate.

Other special circumstances that might argue for additional reporting exemptions include a demonstration that a CERCLA response is infeasible or inappropriate at a particular type of mine. With respect to this issue, the Agency wishes to point out that appropriate CERCLA responses at mines can fall well short of covering the entire site with soil or water, which would defeat the very purpose of extraction. For example, it may be feasible or appropriate to cover certain waste piles or inactive mine areas with soil or water. Many other types of response actions have actually been taken at mine sites on the National Priorities List, although not in response to releases of radionuclides. These actions have included measures to control and treat mine water, diverting and controlling stormwater runoff, dumping materials in areas engineered for waste disposal, isolating contaminated areas with fences and signs, providing nearby communities with alternate sources of drinking water, excavating and removing contaminated soil, and injecting concrete into inactive underground mine workings. If these or other responses to radionuclide releases at mines would be infeasible or inappropriate, EPA requests information explaining why.

B. Alternative Exemptions

As outlined below, EPA is considering two alternative approaches for broadening the existing reporting exemptions for certain radionuclide releases. EPA solicits comments and data to assist in consideration of these alternatives with regard to differences in protection of public health and welfare and the environment. All comments on these alternatives, together with comments on the proposed approach described above, will be considered in developing the final rule.

⁴ U.S. EPA, "Risk Assessments, Environmental Impact Statement, NESHAPs for Radionuclides, Background Information Document—Volume 2," Office of Radiation Programs, EPA/520/1-89-006-1, Chapter 12, 1989.

1. Alternative 1: Exempt All Extraction and Coal and Coal Ash Piles

Under one alternative, EPA would exempt from CERCLA section 103 and EPCRA section 304 reporting requirements radionuclide releases from land disturbance incidental to extraction activities at all mines, as well as coal and coal ash piles at all kinds of sites. As in the proposed exemptions, this alternative would not exempt radionuclide releases associated with beneficiation or processing operations that may be located at mine sites, nor would it exempt the disposal of high concentration materials, for example, in inactive mines.

This alternative recognizes that reporting may not serve a useful purpose if a CERCLA response would be infeasible or inappropriate and if a response would rarely be undertaken. A broad exemption would allow the Agency to focus its resources on the most serious releases, and this alternative could result in a greater reduction in reporting burden for both industry and government and a greater cost savings compared to the proposed exemptions.

Another factor possibly in favor of this approach is that individual release reports and responses under CERCLA may not be the most appropriate Federal regulatory response to radionuclide releases from mines. EPA and other government agencies are already aware that all mines in the U.S. are continuously releasing radionuclides to the environment, usually in relatively low concentrations. Rather than requiring release reports and evaluating the need for response on a facility-by-facility basis, it may be more effective for the Agency to study radiation threats at mines categorically and, if found to be necessary, develop more stringent regulations under other statutes. Such investigations focusing primarily on mining and mineral processing wastes are already underway within EPA, including the Office of Radiation and Indoor Air's study of diffuse naturally occurring radioactive material (NORM) wastes and the Office of Solid Waste's evaluation of extraction and beneficiation wastes under the Resource Conservation and Recovery Act. Under this alternative, CERCLA response and liability provisions would remain intact to respond to any serious radiation threats at mine sites that are not being adequately controlled under the existing network of regulations, but release reporting requirements would be eliminated in deference to these or other studies designed to address radiation threats at mines more categorically.

Compared to the proposed exemptions, this alternative may be less successful in contributing to CERCLA's overall goal of protecting public health and welfare and the environment. This could be particularly true at the few categories of mines discussed above that are believed to handle materials with elevated concentrations of radionuclides.

To assist in the evaluation of this alternative, EPA specifically requests information and comment on the need to obtain reports of radionuclide releases from uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content), which would have to be submitted under the proposed exemptions but would not be required under this alternative. Data and analyses regarding the magnitude and extent of radiation threats (if any) at these types of mines, as well as the feasibility and appropriateness of a CERCLA response, would be particularly helpful in this regard. Information and comment on the degree to which other existing regulations and programs adequately control any radiation threats at these types of mines also would assist in evaluating the need for CERCLA section 103 and EPCRA section 304 reporting.

2. Alternative 2: Exempt All Land Disturbance Incidental to Extraction During Mining Activities and All Piles of Diffuse Naturally Occurring Radioactive Material Below a Concentration Cutoff

Under another alternative, EPA would eliminate the requirement to report releases of radionuclides from land disturbance incidental to extraction and releases of radionuclides to and from all piles of diffuse naturally occurring radioactive material (including extraction, beneficiation, and mineral processing materials and wastes as well as coal and coal ash piles at any kind of site), as long as the concentration of naturally occurring radionuclides was below a certain concentration threshold. Persons in charge of sites where such materials are disturbed and/or stockpiled would have to determine the radionuclide concentration of the material that they move or handle. If the concentration fell below the pre-established threshold, it would not be necessary to determine total quantities of radionuclides released for comparison with the RQs (i.e., no release report would be required, regardless of the total quantity released). However, if the concentration exceeded the threshold, it then would be necessary to determine quantities

released and to submit a report if the RQs were met or exceeded.

EPA is considering a concentration cutoff because there may be very little benefit in requiring reports when more than an RQ of naturally occurring radionuclides is released from diffuse sources (such as land clearing, overburden removal and stockpiling, and excavating, handling, transporting, dumping, and storing ores, beneficiation or mineral processing materials and wastes, coal, and coal ash) that continuously emit radionuclides in low concentrations spread over large areas. In developing the adjusted radionuclide RQs, the Agency determined quantities that may result in unacceptable human exposures under a conservative hypothetical scenario in which radionuclides are released from a ground-level, point source (54 FR 22524, May 24, 1989). In essence, this assumes that radionuclides are released in a concentrated form and unable to undergo substantial dilution as they migrate to a point where a person might be exposed. This conservative approach was taken to develop adjusted RQs that would ensure timely reporting in most circumstances. EPA recognizes, however, that the RQs based on this scenario may be unnecessarily low when radionuclides are actually released in more dilute form from a large area source.

In the radionuclide RQ adjustment NPRM (52 FR 8182, March 16, 1987), EPA requested comments on such a concentration cutoff concept in general and, in particular, on the use of 0.002 microcuries per gram (or 2,000 pCi/g) established by the Department of Transportation (DOT) for the purpose of defining radioactive material in hazardous material transport regulations (49 CFR parts 171-177). All commenters who addressed this issue (slightly over half of all commenters) favored a concentration cutoff. However, EPA decided not to pursue the issue further through the radionuclide RQ adjustment rulemaking primarily because: (1) There was not a pre-existing concentration threshold that was widely believed to be acceptable for all possible radionuclide release scenarios (the DOT level of 2,000 pCi/g was generally regarded as too high for many release and exposure situations); (2) EPA did not have a sufficient technical basis at that time for determining an appropriate concentration cutoff; and (3) an RQ adjustment regulation was not viewed as the appropriate forum for conducting the complex analysis needed to determine such a level (54 FR 22528, May 24, 1989).

Nevertheless, after reviewing public comments on the November 30, 1992, NPRM on administrative reporting exemptions, EPA would like to revisit the idea of a concentration cutoff to be applied specifically to land disturbance and piles of diffuse naturally occurring radioactive material (rather than all possible radionuclide releases, as originally envisioned in the radionuclide RQ adjustment NPRM). In particular, EPA requests information and comment on two major issues associated with such an approach. First, what would be an appropriate concentration cutoff level (or levels)? EPA believes that such a level would best be expressed as some increment to natural background. Second, what would be the best way to determine natural background levels?

With regard to the question of an appropriate level, 5 pCi/g of radium-226 above background is one possibility. This is EPA's standard in 40 CFR part 192 for the cleanup of surface soil contaminated with residual radioactive material from inactive uranium processing sites (i.e., uranium mill tailings). As stated in 40 CFR 192.12, remedial actions at such sites shall be conducted to provide reasonable assurance that the concentration of radium-226 in land averaged over any area of 100 square meters shall not exceed the background level by more than 5 pCi/g, averaged over the first 15 centimeters of soil below the surface. In promulgating this cleanup standard, the Agency stated:

The purpose of this standard is to limit the risk from inhalation of radon decay products in houses built on land contaminated with tailings, and to limit gamma radiation exposure of people using contaminated land. * * * Because the risks from soils contaminated with radium-226 are potentially so great, the proposed standard was set at a level as close to background as we believed reasonable, taking into consideration the difficulties in measuring this level and distinguishing it from natural background. (48 FR 600, January 5, 1983)

EPA believes this underlying purpose and rationale make the 5 pCi/g standard a candidate for possible use as a lower-bound concentration cutoff for the purpose of reporting exemptions for land disturbance and piles of diffuse naturally occurring radioactive material, such as extraction, beneficiation, and mineral processing materials and wastes, as well as coal and coal ash.

EPA recognizes, however, that this number would have some limitations if applied in this context. Most notably, the standard was developed based on conditions that represent an inactive uranium mill tailings site, which would

not necessarily represent the conditions at other kinds of sites where naturally occurring radioactive materials are disturbed and handled (e.g., there may be differences in the physical properties and radionuclide concentrations of the materials being handled, as well as in potential human exposure scenarios). In addition, the 40 CFR part 192 standard was developed using risk assessment techniques and standards in place during the early 1980s. More recently, EPA has established guidelines for determining remediation goals for radioactively contaminated soils at Superfund sites.⁵ Depending on the particular conditions at a site, use of these more recent guidelines may result in a cleanup target that differs from 5 pCi/g of radium-226 above background.

Nevertheless, these potential limitations may not seriously undermine the utility of 5 pCi/g above background as an administrative cutoff level for the purpose of establishing CERCLA section 103 and EPCRA section 304 reporting exemptions. If this approach is adopted, EPA could establish this level as an interim cutoff pending the development of a better value or set of values. As part of a separate rulemaking, the Agency is presently developing new cleanup levels for radioactively contaminated soil and ground water. Once these or other levels are finalized, and if they are considered appropriate for the purpose of CERCLA and EPCRA reporting exemptions, they could be adopted as updated concentration cutoffs.

The Agency specifically requests information and comment on the appropriateness of using 5 pCi/g of radium-226 above background as a concentration cutoff for the purpose of establishing CERCLA section 103 and EPCRA section 304 reporting exemptions for land disturbance and piles of diffuse naturally occurring radioactive material. EPA also requests proposals and supporting rationale for any alternative values. Major issues of interest that have a bearing on the appropriateness of any candidate value include its level of protectiveness, the ability to detect the value and distinguish it from natural background, and consistency with other existing regulations and controls.

With regard to the question of determining background, EPA believes that it would be appropriate to use a concentration that represents

undisturbed background radioactivity in surface rocks and soils (to which the public is already exposed). EPA presently is considering three alternatives, but invites information and comment on the practicality and appropriateness of any other possibilities. The three alternatives presently being considered are: (1) Using site-specific values; (2) establishing a single value for the nation as a whole to be used when site-specific data are not available, or (3) establishing regional or State-specific values to be used when site-specific data are not available.

The first alternative, using site-specific values, recognizes the variability in background radioactivity that exists across different sites and the difficulties in determining representative, undisturbed background values. Under this alternative, reporting would depend on site-specific background levels of radionuclides in surface soils. Existing and emerging EPA guidance for determining background concentrations of radionuclides could be used to establish these levels. For example, EPA's Guidance for Data Useability in Risk Assessment⁶ provides general guidance on how to discriminate radioactive site contamination from background. Chapter 10 of the Agency's Risk Assessment Guidance for Superfund⁷ also discusses general issues concerning the determination of background concentrations of radionuclides. In cooperation with the Department of Energy, Department of Defense, and Nuclear Regulatory Commission, EPA is in the process of developing more specific guidelines for surveying radioactively contaminated sites and determining radiological background levels (as part of the Multi-Agency Manual for Environmental Radiological Surveys). Once completed, these guidelines could be adopted for use in determining background levels under the RQ program.

Under the second and third alternatives, EPA would establish default values that site owners or operators would use in the absence of reliable site-specific data. If either of these alternatives were adopted, the Agency could use the background

⁶ U.S. EPA, "Guidance for Data Useability in Risk Assessment," Part A (Publication 9285.7-09A, April 1992) and Part B (Publication 9285.7-09B, May 1992), Office of Emergency and Remedial Response. For example, see Section 6.2 of Part B.

⁵ U.S. EPA, "Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals)," Interim, Office of Emergency and Remedial Response, Publication 9285.7-01B, December 1991.

⁷ U.S. EPA, "Risk Assessment Guidance for Superfund, Volume I—Human Health Evaluation Manual (Part A, Interim Final)," Office of Emergency and Remedial Response, EPA/540/1-89/002, December 1989. For example, see Sections 10.3.4 and 10.3.7.

concentrations of radium-226 developed by Myrick et al. (1983), shown in Table 1. If a single default value were adopted for the nation as a whole, EPA could adopt either a central value (the arithmetic or geometric mean of approximately 1 pCi/g of radium-226) or the maximum value reported for all samples analyzed (4.2 pCi/g). Adding a 5 pCi/g concentration cutoff to these background values would result in an overall threshold for reporting purposes of either 6 pCi/g or 9.2 pCi/g of radium-

226. Alternatively, site owners or operators could use the background values for their specific State (again, central or upper end values are candidates). If a site were located in a State not covered by the Myrick et al. data, background values could be estimated by averaging values reported for adjacent States.

Compared to the proposal and the first alternative discussed above, this alternative would result in more uniform treatment of diffuse naturally

occurring radioactive material. The distinction created above between land disturbance incidental to extraction and other activities that may occur at extraction, beneficiation, and/or mineral processing sites would be lost. Instead, the excavation, movement, dumping, stockpiling, and disposal of any kind of diffuse naturally occurring radioactive material handled at any kind of site would qualify for a reporting exemption if it was below the concentration cutoff.

TABLE 1.—STATE BACKGROUND CONCENTRATIONS OF RADIUM-226 IN SURFACE SOIL

State	# of Samples analyzed	Range of values (pCi/g)	Arithmetic mean (pCi/g)	Geometric mean (pCi/g)
Alabama	8	0.47–1.4	0.82	0.77
Alaska	6	0.43–0.92	0.65	0.64
Arizona	6	0.23–2.0	0.95	0.70
California	3	0.24–1.3	0.77	0.62
Colorado	32	0.48–3.4	1.4	1.3
Delaware	2	1.1–1.2	1.2	1.2
Florida	11	0.25–2.3	0.84	0.67
Georgia	9	0.46–1.6	0.88	0.81
Idaho	12	0.64–1.6	1.1	1.1
Illinois	7	0.65–1.2	0.97	0.95
Indiana	2	1.0–1.1	1.1	1.1
Kansas	6	0.34–1.4	0.97	0.86
Kentucky	13	0.81–4.2	1.5	1.4
Louisiana	2	0.58–0.84	0.71	0.70
Maryland	6	0.49–1.2	0.72	0.69
Michigan	10	0.46–2.0	1.1	0.95
Mississippi	3	0.77–1.6	1.2	1.2
Missouri	10	0.31–1.4	1.1	1.0
Nevada	6	0.89–2.0	1.5	1.5
New Jersey	24	0.24–1.4	0.87	0.78
New Mexico	13	0.72–2.7	1.5	1.5
New York	6	0.48–1.2	0.85	0.81
North Carolina	8	0.48–1.2	0.78	0.74
Ohio	12	0.81–2.5	1.5	1.4
Oregon	8	0.24–2.1	0.82	0.68
Pennsylvania	33	0.46–2.4	1.2	1.1
Tennessee	10	0.65–1.4	1.1	1.0
Texas	10	0.54–1.4	0.89	0.85
Utah	32	0.53–1.9	1.3	1.2
Virginia	13	0.60–1.1	0.85	0.83
West Virginia	11	0.78–1.6	1.3	1.2
Wyoming	13	0.65–1.7	1.0	1.0
U.S. Average	327	0.23–4.2	1.1	1.0

Source: Myrick, T.E., B.A. Berven, and F.F. Haywood, "Determination of Concentrations of Selected Radionuclides in Surface Soil in the U.S.," *Health Physics*, Vol. 45, No. 3 (September), pp. 631–642, 1983.

EPA also believes that the use of such a concentration cutoff would be more protective than the proposed exemptions. Under this approach, all sites excavating and/or handling diffuse naturally occurring radioactive materials (e.g., all mining, beneficiation, and mineral processing sites and all sites that handle coal and coal ash) would be required to evaluate the radionuclide concentration of those materials. Release reports then could be required not only from those sites in mining sectors that commonly extract and handle materials with elevated radionuclide concentrations, as in the

proposed exemptions, but also other types of mining sites that happen to be extracting and handling raw materials with unusually high concentrations of radionuclides. At the same time, EPA recognizes that there may be instances when continued releases below some concentration cutoff (and thus exempt from CERCLA section 103 and EPCRA section 304 reporting requirements) could pose a threat, by resulting in the long-term build up of elevated levels of radioactivity in the environment.

Finally, the Agency recognizes that this approach would impose a greater burden on individual site owners or

operators than the proposed approach, since facilities would have to determine concentrations relative to background, as well as releases relative to the RQs if the concentration cutoff is exceeded. However, determining radionuclide concentrations of the materials being extracted and/or handled at a site should be much simpler than estimating total releases into the environment (concentrations likely would be determined anyway when estimating releases relative to the RQs), and burdens associated with determining background levels can be reduced

substantially through the use of national or regional default values.

III. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

These proposed exemptions will result in an estimated net cost savings to the regulated community of \$455,000 annually, as demonstrated by an economic analysis (Estimated Economic Effects of Administrative Reporting Exemptions for Certain Releases of Radionuclides) performed by the Agency, available for inspection in the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Because this proposed rule would grant reporting relief to certain sources of radionuclide releases, the rule would not result in a significant impact on a substantial number of small entities. EPA certifies that this proposed rule is not likely to have a significant impact on a substantial number of small entities and, therefore, that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

Because this rule provides an exemption from CERCLA section 103 and EPCRA section 304 reporting requirements for certain radionuclide releases, there are no unique reporting or recordkeeping provisions that require approval from OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

Approval has previously been granted by OMB for other release reporting requirements referenced in this rule: collection of information pursuant to CERCLA section 103 for releases of hazardous substances equal to or greater than their RQs (OMB control # 2050-0046).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule in which the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be \$100 million or more in any one year. Under section 205 of this Act, EPA must select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency

planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity, Water pollution control, Water supply.

Dated: July 25, 1995.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.6 is amended by revising paragraph (c) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(c) The following categories of releases are exempt from the notification requirements of this section:

(1) Releases of those radionuclides that occur naturally in the soil from land holdings such as parks, golf courses, or other large tracts of land;

(2) Releases of naturally occurring radionuclides from land disturbance activities, including farming, construction, and land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content);

(3) Releases of radionuclides from the dumping of coal and coal ash; and

(4) Releases of radionuclides from coal and coal ash piles.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(vi) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(vi) Any radionuclide release which occurs:

(A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land;

(B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content);

(C) From the dumping of coal and coal ash; and

(D) From coal and coal ash piles.

* * * * *

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